
UTAH LABOR COMMISSION

RACHEL FUENTES,

Petitioner,

vs.

**CHUCK-A-RAMA and MID-CENTURY
INSURANCE COMPANY,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 03-0513

Rachel Fuentes asks the Utah Labor Commission to review Administrative Law Judge Marlowe's decision regarding Ms. Fuentes's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Fuentes injured her left knee while working for Chuck-A-Rama on July 10, 2002. On May 12, 2003, she filed an Application with the Commission for various medical, disability and other benefits for alleged "left knee injury and resulting reflexive sympathetic dystrophy [RSD]." On February 20, 2004, Ms. Fuentes amended her Application to add a claim for permanent total disability benefits.

Judge Marlowe commenced an evidentiary hearing in this matter on August 24, 2004, but prior to completion of the hearing the parties reached a settlement of Ms. Fuentes' claims for disability compensation. The parties also stipulated that Chuck-A-Rama had already paid for medical care necessary to directly treat Ms. Fuentes' knee injury. However, the parties did not resolve Ms. Fuentes' claim for additional medical treatment of her alleged RSD. Instead, the parties agreed that issue should be evaluated by an impartial medical panel.

In a report issued on July 13, 2005, the medical panel concluded that Ms. Fuentes had torn the anterior cruciate ligament and meniscus of her left knee as a result of her work accident. The panel further concluded that these injuries had been appropriately treated with arthroscopic surgery, physical therapy and medication. However, the panel found that Ms. Fuentes did not suffer from reflexive sympathetic dystrophy and required no medical care for that condition. Finally, the panel observed that a work hardening program "**may** be indicated and helpful" to complete the treatment already received" (Emphasis added.)

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In light of the parties' previous settlement of Ms. Fuentes' claims related to her ACL and meniscal injuries, and the medical panel's opinion that Ms. Fuentes did not suffer from RSD, Judge Marlowe dismissed Ms. Fuentes' claim for additional benefits "with prejudice." Ms. Fuentes now asks the Commission to review one aspect of Judge Marlowe's decision—the decision's failure to order Chuck-A-Rama to pay for a work hardening program as mentioned in the medical panel's report.

FINDINGS OF FACT

The Commission affirms and adopts Judge Marlowe's findings of fact.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-418 of the Utah Workers' Compensation Act requires employers or their insurance carriers to pay "reasonable sums for medical . . . services . . . necessary to treat the injured worker." The only issue now before the Commission is whether a work hardening program is "necessary to treat" Ms. Fuentes' knee injury. In arguing that the work hardening program is necessary, Ms. Fuentes relies on the medical panel's observation that such a program "**may** be indicated and helpful." (Emphasis added.)

In *Dalebout v. Union Pacific Railroad Co.*, 980 P.2d 1194, (Utah App. 1999), the Utah Court of Appeals observed that questions of medical fact must be proved by competent opinions of medical probability, rather than possibility. The Commission views the medical panel's comments in this case as suggesting only the possibility that Ms. Fuentes may benefit from a work hardening program. As such, the panel's opinion falls short of proving to a probability that the program is required. The Commission therefore concludes that the evidence presented in this case fails to establish that a work hardening program currently is necessary to treat Ms. Fuentes' work-related knee injury. The Commission therefore concurs with Judge Marlowe's dismissal of Ms. Fuentes' claim for such treatment.

ORDER

The Commission affirms Judge Marlowe's order. It is so ordered.

Dated this 31st day of July, 2008.

Sherrie Hayashi
Utah Labor Commissioner

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

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NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.